

1 WILLIAM HAYS WEISSMAN, Bar No. 178976
wweissman@littler.com
2 JOHANNA R. CARNEY, Bar No. 277946
jcarney@littler.com
3 LITTLER MENDELSON, P.C.
Treat Towers
4 1255 Treat Boulevard
Suite 600
5 Walnut Creek, CA 94597
Telephone: 925.932.2468
6 Facsimile: 925.946.9809

7 Attorneys for Defendant
RUSSELL SIGLER, INC.
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 STEVEN SANCHEZ; individually, and
12 on behalf of other members of the
general public similarly situated,

13 Plaintiff,

14 v.

15 RUSSELL SIGLER, INC., a New
16 Mexico corporation; and DOES 1
through 100, inclusive,

17 Defendant.
18

Case No. 2:15-cv-1350-AB-PLA

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FOR
FAILURE TO STATE A CLAIM
UNDER FEDERAL RULE 12(B)(6)**

Date: March 30, 2015
Time: 10:00 a.m.
Ct rm: 2 – 4th Floor
Judge: Hon.: Andre Birotte, Jr.

19 **TO THE COURT, PLAINTIFF STEVEN SANCHEZ AND HIS ATTORNEY**
20 **OF RECORD HEREIN:**

21 Defendant Russell Sigler, Inc. (“Defendant”) hereby submits the following
22 Request for Judicial Notice and respectfully requests that this Court to take judicial
23 notice of the following facts pursuant to Federal Rules of Evidence 201, which allow
24 the Court to take notice of adjudicative facts that is not subject to reasonable dispute:

- 25 A. January 23, 2011, Claim for Unemployment Benefits filed by Plaintiff
26 Steve Sanchez with the California Employment Development
27 Department.
28

1 Dated: February 26, 2015

/s/ William Hays Weissman
 WILLIAM HAYS WEISSMAN
 LITTLER MENDELSON, P.C.
 Attorneys for Defendant
 RUSSELL SIGLER, INC.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 Defendant requests this Court take judicial notice of the date Plaintiff last
 7 worked for Defendant, January 20, 2011, from Plaintiff's claim for unemployment
 8 benefits filed by him with the California Employment Development Department. A
 9 court may take judicial notice of adjudicative facts where such facts are "not subject to
 10 reasonable dispute because ... [they] can be accurately and readily determined from
 11 sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).
 12 Courts have previously held that a claimant's filing with the EDD may be judicially
 13 noticed under this standard. See *Lillis v. Apria Healthcare, Inc.*, 2013 U.S. Dist.
 14 LEXIS 53244, *9-*11 (S.D. Cal. 2013).

15 Therefore, because it cannot reasonably be disputed that Plaintiff's last day
 16 worked was January 20, 2011, as set forth in Plaintiff's own government filing, whose
 17 accuracy cannot reasonably be questioned, this Court should take judicial notice of
 18 such adjudicative fact.

20 Dated: February 26, 2015

/s/ William Hays Weissman
 WILLIAM HAYS WEISSMAN
 LITTLER MENDELSON, P.C.
 Attorneys for Defendant
 RUSSELL SIGLER, INC.

25 Firmwide:131881565.1 083236.1001

EXHIBIT A

EMPLOYMENT DEVELOPMENT DEPARTMENT #1450
PO BOX 49037
SAN JOSE CA 95161-9037



THIS NOTICE WAS MAILED TO THE EMPLOYER/ADDRESS LISTED BELOW ON: **01/27/11**

|||||
RUSSELL SIGLER, INC.
9702 W TONTO ST
TOLLESON AZ 85353-9703

New Claim: **X**
Additional Claim:
EDD Telephone Number: 1-800-300-5616
TTY (Non-Voice): 1-800-815-9387

IMPORTANT: NOTICE OF UNEMPLOYMENT INSURANCE CLAIM FILED

This is a notice that a claim for unemployment insurance benefits has been filed. Forward it immediately to persons within your organization who are responsible for handling claims. **The time limit for replying is 10 days from the mail date shown above. Failure to respond may result in an increased Employment Tax Rate.**

The claimant provided us with the following information and listed you as his/her last employer:

Claimant's Name	Social Security Number	Effective Date of Claim:	01/23/11
STEVEN SANCHEZ	567-82-8092	Last Date Worked:	01/20/11

Reason for Separation:

UNVOLUNTARY DISMISSAL

I. EXPLANATION AND INSTRUCTIONS FOR EMPLOYERS

You have received this form because the individual shown above has filed a claim for unemployment insurance benefits and has listed you as his/her most recent employer prior to filing this claim. **No reply is required if the claimant was laid off due to lack of work and no other eligibility issue has been identified.** For detailed information on employer responsibilities in the unemployment insurance program, our DE 44, California Employer's Guide, is available upon request.

II. REPORTING FACTS - Respond in writing by completing Sections A, B, C on the reverse of this form.

The law requires an employer to submit any facts in his/her possession which may affect a claimant's eligibility for benefits. Furnish information if this claimant:

- Voluntarily quit
- Was discharged or fired for reasons other than lack of work.
- Left work because of a trade dispute.
- Is receiving a pension based on his/her prior work.
- Is working on a full-time basis, or has earnings payable over \$25.99, covering any time on or after the effective date of this claim as shown on the reverse side of this form.
- Is not able to work, available for, or seeking work.
- Has refused employment.
- Is not legally entitled to work in the U.S.
- Performed services as a sports or athletic participant and has reasonable assurance of performing such services in the next season.
- Made false statements or withheld material information in filing for benefits.
- If you are a school employer, also furnish information if the claimant has a contract for or reasonable assurance of returning to work.

Important: Make your response as complete as possible; these facts will be used in determining the claimant's eligibility.

A Department representative may contact you for further eligibility information. If a representative is unable to reach you, he/she may leave a message for you to return the telephone call. If after 48 hours no response has been received, the Department is required to make an eligibility decision based on available information.

III. TIME LIMITS FOR REPLYING

Submit facts in writing to the field office shown at the top of this form within 10 days of the mail date shown above. If your mailing is late, explain your reasons for delay as the time limit may be extended only for good cause. You may reply on this form in the space provided in Section IV, on additional sheets as needed, or by separate letter. **Always** include your **State Employer Account Number** and include the claimant's Social Security Number as it appears on the claim and in your payroll records.

If you submit facts in a timely manner, a determination will be issued concerning the claimant's eligibility. In addition, if facts are submitted regarding a quit or discharge, a ruling will be issued advising an employer with a reserve account as to whether his/her account will be subject to changes resulting from benefits paid. To obtain a ruling on any prior quit or discharge involving this claimant, you must furnish facts within 10 days of the mail date shown above.

ADDITIONAL INFORMATION ON EMPLOYER RESPONSIBILITIES IS SHOWN ON THE REVERSE
Mail your response to the EDD office shown in the above upper left-hand corner.

(OVER)

DE 1545

NOTICE OF WAGES USED FOR UNEMPLOYMENT INSURANCE (UI) CLAIM

*TO PROTECT YOUR RESERVE ACCOUNT, A REQUEST
 FOR RULING MUST BE POSTMARKED BY
03-01-11

YOUR ACCOUNT NO. BR. NO.

305-0298-3 **00**
 PREDECESSOR ACCOUNT NO.

RUSSELL SIGLER, INC.
SIGLER
9702 W TONTO ST
TOLLESON AZ 85353-9703

CLAIM DATE

01-23-11

***IF INFORMATION ABOUT WAGES IS CORRECT AND YOU DO NOT WISH TO REQUEST A RULING,
 NO FURTHER ACTION IS NECESSARY. THIS FORM IS FOR YOUR RECORDS.**

THE PERSON NAMED BELOW HAS RECEIVED UI BENEFITS BASED IN TOTAL OR IN PART ON WAGES YOU REPORTED.

CLAIMANT'S NAME NAME WAGES REPORTED UNDER SOCIAL SECURITY NUMBER OTHER SOCIAL SECURITY NUMBER
S SANCHEZ S SANCHE 567-82-8092

WAGES YOU REPORTED BY QUARTER USED TO ESTABLISH THIS CLAIM

12-31-09	03-31-10	06-30-10	09-30-10	TOTAL WAGES REPORTED BY YOU CA
\$.00	\$.00	\$ 7584.46	\$ 15519.54	\$ 23,104.00

TOTAL WAGES REPORTED BY YOU AND ALL OTHER EMPLOYERS TO ESTABLISH THIS CLAIM \$ **58,102.59**

THE PERCENTAGE OF BENEFITS CHARGEABLE TO YOUR RESERVE ACCOUNT IS **39.764 %**

THE CLAIMANT'S WEEKLY BENEFIT AMOUNT IS **\$450** TO A MAXIMUM BENEFIT AMOUNT OF **\$ 11700**

**The maximum charges for each week benefits are paid will
 be \$ 178.94.**

RULINGS: To request a ruling, supply the information below and mail to the address in the upper left corner.

1. Give date(s) of separation(s) and rehire(s) (if any) during quarters used to establish this claim.

Separation(s) Date(s) _____ Rehire(s) Date(s) _____

2. Did the claimant notify you that he/she quit? Yes ☐ No ☐

3. Give complete details about separation _____

The above statements were taken from business records or are based on knowledge of the undersigned.

PRINT NAME _____ DATE _____

SIGNATURE _____ PHONE NUMBER () _____